

INDIGENT LEGAL SERVICES BOARD

AGENDA

September 23, 2016

Association of the Bar of the City of New York

- I. Opening Remarks by the Chief Judge
- II. Approval of Minutes from June 17, 2016 Meeting
- III. Presentation by Angela Burton, Director of Quality Enhancement for Parental Representation
- IV. Allocation of FY 2016-2017 Aid to Localities Appropriation
- V. Budget Request for FY 2017-2018
- VI. JCOPE Training Schedule
- VII. Director's Summary of Recent Office Activities
- VIII. Next Board Meeting **December 9, 2016**
- IX. Concluding Remarks

Minutes for the Indigent Legal Services Board Meeting

June 17, 2016

11:00 A.M.

New York City Bar Association

Board Members Present: Chief Judge Janet DiFiore, John Dunne, Carmen Ciparick, Judge Sheila DiTullio, Joe Mareane, Vince Doyle (by telephone)

ILS Office Attendees: Bill Leahy, Joseph Wierschem, Amanda Oren, Nora Christenson, Andy Davies, Risa Gerson

Invited Guest: Suzette Melendez

I. Opening Remarks by the Chief Judge

Chief Judge Janet DiFiore opened the meeting by stating her belief in building strong relationships and in rolling up her sleeves to support the wonderful effort being put forward by the ILS Office.

II. Approval of Minutes from the April 22, 2016 Board Meeting

The Chief Judge inquired whether the board members had received copies of the minutes from the prior meeting. The board members acknowledged that they had received the minutes. The Chief Judge asked if there was a motion to approve the minutes.

John Dunne made a motion to approve the minutes. His motion was seconded by Sheila DiTullio and unanimously approved by the board members in attendance.

III. Honoring Judge Toni Cimino

The Chief Judge expressed her pleasure that Toni Cimino was appointed by the Mayor to be a judge. She said that Toni will make a fantastic judge and that she will be a great asset for the court system.

Bill Leahy stated that he first met Toni back in 2010. She was asked to be the liaison between the Chief Judge and the Office of Indigent Legal Services. Bill met her during the interview process. In the ensuing five plus years, Toni was a rock and a guiding hand for the Office and the Board. She has demonstrated an ability to act efficiently and fairly, and she is dedicated to achieving justice in the courts. Bill said that he gives props to the Mayor for making a great choice, as well as to the selection committee (with a nod to Judge Ciparick).

Carmen Ciparick noted that the selection committee brings good people before the Mayor, but that he makes the ultimate decision.

John Dunne stated that while Toni was currently in judge school, this was probably an instance of where the student is smarter than the professor.

Sheila DiTullio shared that Toni had patience and tenacity. Though she had interviewed with the Mayor once before, he did not appoint her at that time and she was disappointed. However, Toni stayed even, tried again, and it worked out. Sheila said that Toni's temperament, sense of fairness, and demeanor will make her an excellent judge.

Chief Judge DiFiore requested that the Board excerpt this portion of the minutes and send them to Toni.

At this point, Bill Leahy also noted that Professor Suzette Melendez was here to join the Board Meeting as an invited guest. She is in the process of being approved for Board membership, and she was not attending the meeting in the capacity of a board member. Suzette thanked Bill and the Board for inviting her to attend.

IV. Report on Pending Legislation

Bill Leahy started off by saying that he hoped to elicit discussion amongst the Board about the still pending Fahy-DeFrancisco bill providing a full state fiscal takeover of indigent defense services. On October 21, 2014, a settlement was reached after 7 years of litigation in the *Hurrell-Harring* case between the plaintiffs and the State of New York and the five lawsuit counties. The settlement provided for qualify-enhancing elements, such as meaningful early client visits, legal research, motion practice, etc. All of these measures were to be state-funded and in line with best practices. Implementation of the provisions of the settlement were to be vested in an independent and professionally staffed office, the Indigent Legal Services Office, with oversight by the Board.

Bill continued by saying while this was great for the five counties, what about the rest of the state? The Office, the counties, and other stakeholders made the case that the State cannot neglect the rest of the counties. The five boroughs of New York City are provided for and have institutional defender caseloads in place that ensure meaningful and quality representation. The five counties in the lawsuit are addressed in the settlement and will be undergoing real transformation and improvement. However, there is a need to address the "forgotten 52 counties."

Bill noted that there is leadership in the Legislature from Assemblymember Fahy and Senator DeFrancisco in submitting a bill to provide for the remaining counties. There has been strong advocacy by the NYCLU. The Senate voted on the bill, and it passed. The Assembly bill is identical and currently under consideration.

Bill explained that the bill does three important things: 1) Assumes state funding of indigent legal defense. It eliminated the unfunded mandate, and this is a key reason why the vote went through the Senate with no opposition. 2) Extends *Hurrell-Harring* reforms laid out in the settlement statewide 3) Provides the ILS Office and Board with rules and regulations to enforce. It creates authority so there is force behind the guidelines. Bill said that there is still the issue of gubernatorial review. He knows that there is great attention to the fiscal impact on the budget. Bill indicated that in advocating for the bill, the stakeholders must focus on the idea that there should be one standard of justice across the State. The task of getting there is large, in a fiscal sense and a structural organization sense. Bill noted that they are learning a lot with their experience in the five counties and learning a lot about how it might work on a broader scale.

Bill emphasized that the bill will not become law until the Governor signs it. Bill asked for the Board's advice and invited comments and stressed that it was a very big moment.

Carmen Ciparick responded by saying that Bill Leahy's efforts have been tremendous in making things come to fruition. She expressed that it was a very daunting task and asked if people were working on making sure the bill was passed in the Assembly, and Bill Leahy said that Patricia Fahy is on top of it.

John Dunne noted that if both houses pass the bill, the Senate will decide when to send the bill on to the Governor. The bill will have an enormous fiscal impact and will result in intense discussion with the Governor's Office. He asked if ILS will have a continuing role in the negotiations with the Governor. Bill Leahy said that ILS has an increasingly interdependent relationship with the Executive Branch and will be working closely with the Division of Budget and Counsel's Office to talk about the budget. The frequency and intensity of discussions will be elevated. Bill promised to continue in his efforts to make it happen. Everyone has to be working with maximum cooperation and skill.

Joe Mareane shared that he felt this was a piece of milestone legislation and a tremendous advance. He said that he was proud of the Board and the ILS staff being sensitive to the constraints that counties face. He expressed that the counties always want to meet the representation standards but they simply do not have the resources. He opined that he thought the bill was measured and included a gradual seven-year approach that would not have a crippling impact. The gradual approach will result in much greater success of it being fully implemented, and it will allow counties to improve the quality of defense. Joe indicated that Steve Acquario at NYSAC is a real advocate for the bill. He stated that the bill is real mandate relief and that he is so pleased with where things are today. Joe hoped that the bill gets across the finish line, and indicated that if there is anything the counties can do to help, they will.

Bill Leahy responded to Joe's comments by saying that the original sponsors of the bill recognized that it would be more feasible to pass the bill if the impact is spread out. The implementation will begin in the next fiscal year. The amount of state support will increase by 10% each year for five more years, and in the seventh year it will reimburse the full amount. Everyone wants to find a way for this milestone to be achieved, and people want to do it in a

fiscally responsible way. Bill Leahy had a conversation with Oneida County Executive Tony Picente, who gave the point of view of the counties. Tony Picente testified and addressed the unfunded mandate. He gave the county perspective and said that this unfunded mandate was distinct, because it was manageable and the state could take it over. He was very persuasive.

Sheila DiTullio said that Joe Mareane made a good point about the bill. She spoke to the Buffalo County Executive, and he also likes how the funding is phased in gradually. He was able to be much more supportive because of the parameters of the bill. Originally he was nervous. Bill said that it is interesting to look at the history of ILS from a fiscal lens. ILS' work was able to generate a 23% increase in indigent defense from the counties. ILS only received a \$4 million dollar increase from the State, and the Office worked with indigent legal service providers to increase the effectiveness of State monies. Bill stated that ILS has a good track record working with counties, indigent defense providers, etc. He sees this as a real opportunity. He believes that ILS can maintain cooperative working relationships and improve the quality of representation. Bill also stated that it was an opportunity for New York to lead. He received calls from the National Association of Public Defense, ABA, and other organizations. Bill indicated that the country will notice and approve of the progress made in New York. States such as Pennsylvania, Ohio, California, and others all have the same problem. It is hard to maintain uniform quality of excellent representation throughout the state. The uneven quality of indigent defense still exists more than 50 years after *Gideon*. There needs to be common purpose, adequate funding, and structure. Bill stated that we have all the ingredients, and to achieve state funding of indigent defense in a big state will have national implications. He believes there is national approval from all of those involved in it.

Joe Wierschem gave an update of two other program bills submitted by the Office of Court Administration to the Legislature. One of the OCA bills will allow for off-hour arraignment parts. It allows the Chief Administrative Judge, in consultation with all of the stakeholders, magistrates, counties, and the ILS office, to engage in a collaborative process to establish off-hour arraignment parts. This piece of legislation has been worked extensively. It has been a top priority for OCA. Judge Daniel Conviser is the Chair of the Advisory Committee on Criminal Law and Procedure, and he helped to create the measure. The bill is sponsored by Senator Bonacic. Chief Administrative Judge Marks made calls to Senator Bonacic and the Magistrates' Association. This resulted in a memo in support of the bill from the Magistrates' Association, which was critical.

Both the Chief Judge and Carmen Ciparick echoed that the Association's support was critical.

Joe Wierschem continued to say that the off-hours arraignment bill passed in both the Senate and the Assembly. He provided the example that in Onondaga County, it will greatly reduce costs. Magistrates also do not have to be on call every night, and a rotation of magistrates will cover the parts. The providers are on board as well. Chief Judge DiFiore noted that the OCA bill made practical, good sense.

Carmen Ciparick asked if the 18B panels were being cooperative. Joe Wierschem replied that it varied among the counties. All the counties have challenges with town and village courts, and the 18B attorneys are generally being cooperative. They must change the system of having the magistrates staff the courts every night. Bill Leahy noted that Delaware County is an all assigned-counsel county, and the Bar Association had great support for the bill. The bill will formalize appropriate arraignment procedures and allow for reasoned advocacy about bail, conditions of release, and motions. Bill gives credit to OCA and said that the bill had great promise.

Joe Wierschem gave an update on another OCA program bill and a related bill from the State Comptroller. On the June 13, 2014 meeting, the Board approved the recommendation of the ILS Office that legislation be developed to require counties and Indigent Legal Services providers to file annual reports required under statute with the ILS Office. Currently, counties submit an annual financial report on indigent legal services to the State Comptroller and also annually submit a report to OCA on staffing levels and case levels. Legislation submitted by OCA would add the ILS Office to both of those reporting requirements and would transfer authority from OCA to the ILS Office to approve assigned counsel plans.

Joe reported that this OCA legislation will not pass in this legislative session because there is no same as bill in the Senate. However, the State Comptroller has a separate program bill with one of the same provisions, which provides that state financial reports on indigent legal services will go to the ILS Office. The Comptroller's bill passed both houses and will go to the Governor. Bill Leahy noted that the financial information and case information are basic tools that are necessary to do a cost estimate. The bill will allow the ILS Office to get the financial information directly and more efficiently instead of going through the Comptroller and OCA.

V. Report on Onondaga County Mentor Program and RFP

Amanda Oren, the quality improvement attorney for *Hurrell-Harring* on the ILS staff, gave a report on the mentorship program in Onondaga County. Amanda stated that they identified eight experienced, high caliber attorneys who were committed to improving the quality of defense. The mentors are long-time defense attorneys. They know there are systemic problems and know the problems must be corrected. They conducted a three-hour orientation with the mentors. The mentors were excited to have an avenue to make things better. They have actually been informally mentoring people for years.

Next Saturday in Syracuse, there will be a joint orientation between mentors and the mentees. The mentee attorneys have zero to eight years of criminal experience. They can pick their mentors. The mentors will have about five mentees each. Amanda commented that there is a lot of talent in the county, but people have not been able to shine through given the current system because the system was broken.

Amanda continued to note that the County Attorney's office had been very involved in issuing a RFP for a new provider. The focus of the RFP has been on quality. The County sees the mentor program as surviving after the hiring of a new provider.

John Dunne asked if the ILS Office was involved in drafting the RFP. Amanda and Joe Wierschem confirmed that Joe Wierschem and Patricia Warth were involved in drafting the language. Chief Judge DiFiore asked how the mentees were chosen. Amanda said that they looked at the attorneys on the 18B panel and about 25% were younger attorneys with 0-8 years of practice. They chose to select those with the least experience. The Chief Judge asked if there should be an assessment of the panel attorneys and decide who needs attention. Amanda said that the mentorship program is not mandatory for the mentees and is focusing more on self-evaluation. There will be a curriculum that the attorneys will use, and mentees will create a professional development plan. The mentees will reflect on what they need to improve on and create a plan for the year. The mentor will look over the plan, and they will do a six-month and 12-month survey of the plan. Amanda noted that they will be meeting with mentors every quarter and discuss what needs to be improved.

Chief Judge DiFiore inquired whether there is feedback solicited from the judiciary. Amanda responded that they will consider that next. The current mentorship program is meant to be supportive, not evaluative. Eventually they will talk to the judiciary and the district attorney's office. There is an extensive evaluation process occurring in Erie County. They do a full assessment of each attorney. This is not yet in Onondaga's assigned counsel plan, but Amanda considers it a next step.

Joe Mareane noted that the county was on the verge of changing its approach to indigent defense and that it might hire the Legal Aid Society. He inquired how the mentoring program will change if Legal Aid takes over. Amanda Oren replied that Onondaga County will always have an assigned counsel program to some degree. She has not discussed what the program would look like if Legal Aid took over. They may use the mentoring program to train the staff, or the mentoring program may only apply to assigned counsel.

Sheila DiTullio stated that she was excited that they were redoing things in Onondaga County. She believes the next step should be evaluation of the assigned counsel. They have an evaluation process in Erie County that is very confidential and in depth regarding each attorney. They gain judges' insight about the attorneys. Amanda said that right now, there is so much distrust between the 18B panel and all of the players. The goal of the program is to help the panel attorneys realize they can be supported.

Vince Doyle signed off on the telephone at this time.

VI. Report on *Hurrell-Harring* Caseload Standards Study

Andy Davies reported that the ILS Office is developing the standards for caseload limits. The caseload limit is the number of cases an attorney can handle and continue to provide quality

representation in one year. Once the caseload limits are set, they will be the basis for calculating the need for additional funding, presumably to hire additional defense attorneys. Andy reiterated that the ILS Office must get the limits right and they want to approach the question with as much integrity as possible.

Across the country, other bodies have also done studies on caseload limits, such as the American Bar Association, Rand Corporation, and National Center for State Courts. The method many of them have used is the weighted caseload study. The researchers go to where the attorneys are working, and they track the time attorneys spend on each individual case. It is a reporting burden that indigent defense counsel do not usually have. The time-keeping study will tell them how much time the attorney is spending now. Then they go back and ask if the time is sufficient. Other questions asked include, at which portions of representation do you feel you need more time? How much time do you think people should be spending? Where would more time fall? Andy stated that the third step was to convene a Delphi panel, where respected members of the bar come together. The group then reviews the data and comes to a consensus about what the caseload limit should be.

Andy reported that an amendment was made to the *Hurrell-Harring* settlement. ILS signed a contract with the Rand Corporation to do the caseload limits study. Andy is confident that they are excellent colleagues to work with and will give ILS control in authoring the study. The study must be completed by November 15 to promulgate the standards on time.

Nora Christenson from the ILS Office stated that it is imperative to have attorney participation in the study. They are working closely with the providers in the five counties and engaging them in a meaningful way. There will be in-person meetings with the providers in the five counties to get them comfortable with what is coming down the pipeline. It is burdensome on the attorneys, but it will only be a short period of time. She is communicating to the providers that the study must have integrity and the State will take steps based on the standards.

Nora has sent announcements to the provider heads or assigned counsel panels about the study and to recruit attorneys to participate in the study. She will be reaching out to the panel directly in Onondaga and working with the mentor program. They will be informing the mentors and having them spread the word. The study is currently launching, and ILS is also working with Rand to keep apprised of any developments.

Bill Leahy said that the ILS Office is thrilled to be working with Rand. They are creator of Delphi process, and they have a head researcher that matches well with Andy Davies. John Dunne expressed concern whether ILS could afford such a premier research organization. Bill responded saying that Rand has a particular interest in working with states and in indigent defense. They currently do a lot of work on the federal level, and they would like state experience.

VII. Report on Progress of *Padilla* Regional Immigration Assistance Centers

Bill Leahy gave a report on the *Padilla* regional immigration assistance centers. The centers are on the frontier of regionalization. The goal is for regional satellite offices to support best practices in a range of substantive areas. The budget requests to fund these efforts have not come to fruition. However, the immigration regional centers currently do model state and county cooperation. The grantees' meeting on June 2 was a very successful day, and everyone had a common purpose.

VIII. Schedule of Remaining 2016 Board Meetings

The remaining Board meetings will be held on September 23 and December 9. Bill Leahy emphasized that there are only four board meetings per year. He asked for the Board's participation, advice, support, and in-person attendance at the meetings. He is hoping they will add an additional member soon. He looks forward to seeing everyone in September.

IX. Concluding Remarks

The meeting was adjourned.

MODEL PARENTAL REPRESENTATION OFFICE

**New York State Office of Indigent Legal Services
Request for Proposals**

The Office of Indigent Legal Services ("ILS") and the Indigent Legal Services Board ("the Board") were created by Executive Law Article 30, §§ 832 and 833 in 2010. The statutory mission of ILS is "to monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the county law."¹ Operating under the Board's discretion and pursuant to policies established thereby, ILS assists county governments in the exercise of their responsibility to provide meaningful and effective representation to persons who are legally entitled to a lawyer but financially unable to obtain one. Assistance provided by ILS and the Board includes distributing state funds and targeting grants to counties in support of innovative and cost-effective solutions to enhance the quality of indigent legal services.

Timelines for this Request for Proposals

RFP Release Date	
Questions Due By	
Questions Posted By	
Proposal Due Date	
Award Announcement	
Tentative Contract Start Date	

Intent of this Request for Proposals

ILS announces the availability of funds and solicits proposals for the establishment of a Model Parental Representation Office in a county outside of New York City to provide legal representation to parents² in child protective proceedings under New York Family Court Act Article 10 and termination of parental rights proceedings under Family Court Act Article 6.

The intent of this Request for Proposals ("RFP") is to improve the quality of indigent legal services by establishing, in a county outside of New York City, a demonstration project (the "Model Office") which will implement standards and best practices in child protective and termination of parental rights cases

¹ Executive Law § 832(1).

² For ease of reference, in this RFP the term "parent" refers to a biological parent or other "legally responsible" person who is eligible for assigned counsel under New York Family Court Act § 262.

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("state intervention cases") as embodied in ILS's *Standards for Parental Representation in State Intervention Matters*.³

In New York, the right to counsel for indigent parents in state intervention cases is constitutionally and statutorily mandated. *Matter of Ella B.*, 30 N.Y.2d 352 (1972); Family Ct. Act §§ 261, 262. The provision of high quality legal representation to individuals unable to pay for a lawyer is essential to the fair administration of justice. Consistent with the goals of the child welfare system, meaningful and effective representation for parents in state intervention cases requires an approach designed to prevent unnecessary disruption of the parent-child relationship and to promote the safety, well-being, and stability of children within their families. Accordingly, this demonstration project seeks to implement a client-centered, holistic, and multidisciplinary model of representation that addresses both the legal and social services issues inherent in state intervention cases. Furthermore, to protect important substantive and procedural due process issues implicated in these cases even before any court action has been initiated, and to avoid the unnecessary separation of children from their families, the Model Office will also provide advice and counsel to parents during investigations by Child Protective Services ("CPS"). The *ILS Parental Representation Standards* provide guidance and a comprehensive roadmap for implementing these core principles of meaningful and effective parental representation.

Exemplified by the nationally acclaimed, New York City-based Center for Family Representation, Inc. ("CFR"),⁴ the multidisciplinary approach upon which this demonstration project is based is recognized by the United States Health and Human Services Department and the American Bar Association as an essential component of effective parental representation.⁵ It is expected that this demonstration project

³ *Standards for Parental Representation in State Intervention Matters*, New York State Office of Indigent Legal Services (effective December 2, 2015) (hereinafter *ILS Parental Representation Standards*), accessible at <https://www.ils.ny.gov/content/parent-representation-standards>.

⁴ See, e.g., Elizabeth Thornton, *Court-Based Child Welfare Reforms: Improved Child/Family Outcomes and Potential Cost Savings*, Center for Children and the Law (2012); and Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost-Savings*, *Family Law Quarterly*, 46(1), 137-152 (2012). While the average length of stay for a child in foster care in New York is twenty-nine months, for CFR clients' children, the average length of stay in foster care is less than 5 months. In about half of their cases, CFR succeeds in keeping children out of foster care entirely. CFR estimates that it has saved \$130 million in public dollars. The Center for Family Representation 2014 Report to the Community, <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>.

⁵ Federal guidance to State Court Improvement Programs includes access by parents' attorneys to multi-disciplinary professionals such as "social workers, investigators, Court Appointed Special Advocates (CASAs), etc." as one indicator of "quality, effective" parental representation. *Indicators of Quality Legal Representation*, Attachment B, [Instructions for State Courts Applying for Court Improvement Program \(CIP\) Funds for Fiscal Years \(FYs\) 2012-2016](#), Program Instruction ACYF-CB-PI-12-02 (Children's Bureau, U.S. Department of Health and Human Services, Administration for Children and Families (January 11, 2012), accessible at <http://www.acf.hhs.gov/sites/default/files/cb/pi1202.pdf>). The American Bar Association urges parents' attorneys to "[e]ngage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available." American Bar Association, *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, Standard 26 (2006), accessible at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/ABA-

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will not only improve the overall quality of state intervention representation in the grantee county, but will also allow for assessment of its potential for successful implementation in other New York counties.

Section I: Background

A parent's interest in his or her child's care and custody is one of the oldest and most fundamental liberty interests recognized by law.⁶ Losing the right to raise one's child is "often . . . the more grievous" as compared to the deprivation of one's physical liberty.⁷ Indeed, some courts have referred to judicial termination of parental rights as the "civil death penalty."⁸ The United States Supreme Court has emphasized that parents' constitutionally protected liberty interest in associating with and raising their children "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life."⁹ Moreover, a child has a concomitant interest in being raised within his or her family.¹⁰ Indeed, while the objective of CPS intervention is the protection of children thought to be abused or neglected, given the heightened risk of negative outcomes associated with foster care placement, social science evidence suggests that a child is

[Parent-Attorney-Standards.authcheckdam.pdf](#); see also *ABA National Project to Improve Parental Representation: An Investment That Makes Sense*, http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf, ("Today there are relatively few established multidisciplinary parent representation programs. Yet we have learned that by investing in this kind of high-quality parent representation, we can reduce the number of children removed from their parents and for those children removed, shorten the time they spend in foster care."); American Bar Association *Indicators of Success for Parent Representation*, at 1 (American Bar Association, 2015). The Indicators of Success, which resulted from a collaborative project of Administration for Children Youth and Families (ACYF)'s Federal Region VI Court Improvement Project Directors, prioritizes "Access to Multidisciplinary Staff" as one of four measures "that will most assist jurisdictions in assessing their parent representation systems."

⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

⁷ *Lassiter v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting).

⁸ E.g., *In re K.A.W.*, 133 S.W.3d 1, 12 (Sup. Ct., Mo. 2004) ("The termination of parental rights has been characterized as tantamount to a "civil death penalty. . . It is a drastic intrusion into the sacred parent-child relationship; *In re Smith*, 77 Ohio App.3d 1, 16 (1991) ("A termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows."); see also Stephanie N. Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 St. Louis U. Pub. L. Rev. 341 (2009).

⁹ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹⁰ Assessing the private interests at stake in the fact-finding stage of a child protective case, the *Santosky* Court observed that "the State cannot presume that a child and his parents are adversaries," and that, until the State proves parental unfitness, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760.

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better off with his or her family even in "marginal" cases where CPS investigators disagree about whether the child should be taken into state custody.¹¹

Recognizing the need for a check on government interference with the fundamental liberty interests of family integrity and family autonomy, in 1972 the New York State Court of Appeals held that indigent parents in state intervention cases have a constitutional right to publicly-funded legal representation.¹² Citing the "gross inherent imbalance of experience and expertise" between the State and an unrepresented parent,¹³ the *Ella B.* Court held that principles of fundamental fairness, due process, and equal protection require that a publicly-funded lawyer be made available to an indigent parent when the State seeks to take that parent's child into custody. The Court reasoned that "[a] parent's concern for the liberty of the child, as well as for his care and control, involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer."¹⁴

In 1975, the New York State Legislature codified the *Ella B.* decision in the New York Family Court Act.¹⁵ Emphasizing the "fundamental interests and rights" implicated in family-related cases, the Legislature declared that legal counsel is "indispensable" in ensuring the "practical realization of due process of law" and in assisting the court in making "reasoned determinations of fact and proper orders of disposition."¹⁶ The courts have subsequently made clear that the constitutional standard of effective assistance of counsel under the New York State Constitution applies in state intervention cases.¹⁷

For child welfare-involved parents, effective assistance of counsel can mean the difference between family preservation and the civil death penalty - termination of parental rights. Given the complex dynamic of legal and social work issues, federal agencies, national advocacy organizations, and state

¹¹ Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effect of Foster Care*, 97 *Amer. Econ. Rev.* 1583, 1584 (2007) (suggesting that "significant benefits from foster care placement . . . appear unlikely for children at the margin of foster care."), accessible at http://www.mit.edu/~jjdoyle/fostercare_aer.pdf; see also Joseph J. Doyle, Jr., *Child Protection and Adult Crime: Using Investigator Assessment to Estimate Causal Effects of Foster Care*, 116(4), *J. of Pol. Econ.* 746 (2008), accessible at http://www.mit.edu/~jjdoyle/doyle_jpe_aug08.pdf.

¹² *Matter of Ella B.*, 30 N.Y.2d 352 (1972).

¹³ *Id.* at 356 note 3.

¹⁴ *Id.* at 356-357.

¹⁵ N.Y. Family Ct. Act § 262.

¹⁶ N.Y. Family Ct. Act § 261.

¹⁷ *Brown v. Gandy*, 3 N.Y.S.3d 486 (4th Dept. 2015) (given the "drastic" nature of the potential consequences, "the Family Court Act affords protections equivalent to the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings."); see also *Matter of Jaikob O.*, 931 N.Y.S.2d 156 (3rd Dept. 2011); *Matter of Eileen R.*, 912 N.Y.S.2d 350 (3rd Dep't 2010); *Matter of Alfred C.*, 655 N.Y.S.2d 589 (2d Dept. 1997).

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and local governments have begun to recognize the multidisciplinary, team-based approach as an essential component of effective parental representation.¹⁸ While still relatively rare, this approach is becoming more and more prevalent,¹⁹ and is a defining element of this Request for Proposals.

In New York, integrated legal and social work advocacy has long been recognized as necessary for effective parental representation. For example, in a 2000 report, *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings*, the New York City Public Advocate argued that New York State's "statutory and constitutional duties of providing representation to indigent adults involved in Family Court matters" would be best met by establishing an organization which would combine "accountability, specialization, social work support services and institutional resources."²⁰ The report concluded that "[i]f parents have access to adequate representation, everyone will gain: money will be saved, Family Court will function more effectively, and children will receive the stability and permanence to which they are entitled."²¹ The Committee envisioned a multidisciplinary model, with "[s]taff attorneys who work in conjunction with family advocates, paralegals or social workers who can educate and assist the parents."²² In 2001 the First Judicial Department's Committee on Representation of the Poor echoed the *Justice Denied* report, observing that "the need for interdisciplinary services involving at least a social worker in addition to an attorney suggests that an institutional provider to represent parents in Family Court should be established."²³

¹⁸ See, e.g., *Indicators of Success for Parent Representation*, American Bar Association, Center on Children and the Law (2015), accessible at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf; *Instructions for State Courts Applying for Court Improvement Program (CIP) Funds, Fiscal Years 2012-2016*, at 7 and Attachment B, *Indicators of Quality Legal Representation*, U.S. Dep't of Health and Human Services, Administration for Children and Families (2012); see also *ILS Parental Representation Standards*, *supra* note 3, Standard G (Model of Representation - Multidisciplinary Practice).

¹⁹ In addition to its adoption by New York City as described herein at pp. 6-7, other examples include the Vermont Parent Representation Center, Inc. (<http://vtprc.org/>); the Detroit Center for Family Advocacy (<https://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx>); the Family Defense Center (Chicago) (<http://www.familydefensecenter.net/>); the New Jersey Office of the Public Defender, Office of Parental Representation (<http://www.state.nj.us/defender/structure/opr/>); and the Washington State Office of Public Defense, Parent Representation Program (<http://www.opd.wa.gov/index.php/program/parents-representation>).

²⁰ Mark Green & Child Planning & Advocacy Now (C-PLAN), *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings*, at 44-45 (May 2000) (hereinafter *Justice Denied*).

²¹ *Id.* at 46.

²² *Id.* at 45.

²³ First Judicial Department Committee on Representation of the Poor, *Crisis in the Legal Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*, at 12 (March 2001) (hereafter *Crisis in Legal Representation of the Poor*), accessible at http://www.courts.state.ny.us/press/old_kecp/1AD-rcp-poor.shtml.

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Observers have also noted the need for comprehensive, holistic advocacy for parents. The First Judicial Department Committee identified an "acute" need for more holistic representation for families involved in the child welfare system because those families "often have other needs that affect their ability to resolve the Family Court proceedings successfully."²⁴ Implicitly recognizing that out-of-court advocacy for parents in child welfare cases is at least as important - if not more so - as representation at court proceedings, the Committee stressed the need for parents' attorneys to engage in legal and advocacy strategies beyond defending the child abuse or neglect allegations. "To be truly effective, the institutional provider for parents should have the staffing capability to reach out to community services, mental health facilities, parent education, and drug counseling programs. It should also have access to other attorneys who could advise or represent parents in housing, public assistance, disability, and domestic violence problems."²⁵

In the wake of similar calls by legislators, court-appointed task forces, bar association committees, parents' attorneys and others for an institutional, multidisciplinary, holistic approach to parental defense,²⁶ beginning in 2007 the New York City Mayor's Office of Criminal Justice entered into multi-year contracts with several organizations.²⁷ Through these contracts, New York City has institutionalized "a multidisciplinary service model, including social workers, paralegals, investigators,

²⁴ *Id* at 14.; see also Roger L. Green and William L. Parment, *Legislative Report: Losing Our Children: An Examination of New York's Foster Care System*, New York State Assembly, Committee on Children and Families and Committee on Oversight, Analysis and Investigation (July 1999) (hereinafter *Losing Our Children*) (advocating funding for programs to provide "comprehensive representation" for parents including "legal assistance to help families with their housing, public assistance and domestic relations problems to alleviate any conditions which may have caused abuse or neglect.")

²⁵ *Crisis in Legal Representation of the Poor*, supra note 23 at 14.

²⁶ See, e.g., *Families in Limbo: Crisis in Family Court, Recommendations & Solutions*, Child Welfare Watch (Winter 1999); Shrie Bonstelle and Christine Schessler, *Adjourning Justice: New York State's Failure to Support Assigned Counsel Violates the Rights of Families in Child Abuse and Neglect Proceedings*, 28 *Fordham Urb. L. J.* 1151 (2001) (hereinafter *Adjourning Justice*); Special Child Welfare Advisory Panel, *Advisory Report on Front Line and Supervisory Practice: Special Report On Family Court*, Annie E. Casey Foundation (2000), accessible at <http://files.eric.ed.gov/fulltext/ED439189.pdf> (hereinafter *Special Report on Family Court*); Julia Vitullo-Martin and Brian Maxey, *New York Family Court: Court User Perspectives*, Vera Institute of Justice (January 2000), accessible at <http://www.vera.org/sites/default/files/resources/downloads/nyfamilycourt.pdf>; Beth Harrow and Sue Jacobs, *Report of the Parent Representation Working Group*, 70 *Fordham L. Rev.* 399 (2001). See also Ann Moynihan, et. al, *Foreword, Fordham Multidisciplinary Conference - Achieving Justice: Parents and the Child Welfare System*, 70 *Fordham L. Rev.* 287, 309-313 (2001).

²⁷ Heather Appel, *New Influx of Lawyers Coming to Family Court*, City Limits, April 16, 2007, accessible at <http://citylimits.org/2007/04/16/new-influx-of-lawyerscoming-to-family-court/>; Testimony of John Feinblatt, New York City Criminal Justice Coordinator, before the City Council, City of New York, Committee on General Welfare (Hearing Transcript, January 11, 2007, pp. 13-14) (noting issuance of RFP by NYC and awards to legal services providers of contracts that require both legal and social services for parents), accessible at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=446645&GUID=58889C26-F4EB-41FD-9C85-BBB1F960475E&Options=&Search=>.

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experts and parent advocates.²⁸ Currently, the Center for Family Representation, Inc., Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem are the primary providers for the majority of state intervention cases in New York City.²⁹

Consistent with its statutory mandate to improve the quality of indigent legal services provided throughout the State of New York, the Office of Indigent Legal Services seeks to test the efficacy of the multidisciplinary model outside of New York City. As described below, this RFP includes an emphasis on pre-court representation during CPS investigations and caseload caps designed to ensure that Model Office staff have sufficient time to provide high quality representation in accordance with prevailing standards and best practices.

A. Multidisciplinary, Holistic Representation

Multidisciplinary representation: Child welfare cases are complex, and involve multiple and intertwined legal and social issues. The stress experienced by parents and families involved with the child welfare and family court systems is exacerbated by the highly compressed, federally mandated deadline by which a child welfare agency must initiate a termination of parental rights proceeding.³⁰ Given these multifaceted pressures, an integrated approach to parental representation is essential.

This RFP therefore contemplates a multidisciplinary team approach in which a lawyer, social worker, and family advocate work together with the parent to navigate the child welfare and court systems.³¹ The lawyer will provide expert legal advocacy, both in and out of court, and will guide the parent through the

²⁸ The City of New York Criminal Justice Coordinator's Office, *Request for Proposals for Indigent Family Court Legal Services for Respondents in Article 10 Cases* (2007) (on file with ILS).

²⁹ See *Report on the Fiscal Year 2015 Executive Budget for the Mayor's Office of Criminal Justice*, The Council of the City of New York (May 20, 2014), accessible at <http://council.nyc.gov/downloads/pdf/budget/2015/15/eb/cjc.pdf>. Conflict providers of state intervention representation in New York City are the Bronx Defenders, New York County Defender Services, Brooklyn Defender Services, and Queens Law Associates. *Id.*

³⁰ With certain exceptions, child welfare agencies must initiate a termination of parental rights proceeding once a child has been in foster care for 15 of the previous 22 months. N.Y. Soc. Services Law §384-B(1)(i) (enacting provisions of the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § 675(4)(E)).

³¹ See *ILS Parental Representation Standards*, *supra* note 3, Standard G (Model of Representation - Multidisciplinary Practice); see generally Martin Guggenheim and Susan Jacobs, *A New National Movement in Parent Representation*, Clearinghouse Review, Journal of Poverty Law and Policy, Vol. 47, pp. 36-46 (May-June 2013); University of Michigan Law School, *Detroit Center for Family Advocacy Pilot Evaluation Report, 7/2009-6/2012*, p. 2 (February 2013); see also Vermont Parent Representation Center, Inc., *Program Model*, <http://vtprc.org/program-model/>; Diane Boyd Rauber, *From the Courthouse to the Statehouse: Parents as Partners in Child Welfare*, Child Law Practice, Vol. 28, No. 10 (American Bar Association, December 2009) (describing parent advocate programs operating around the country), accessible at http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/parentpartner1.pdf; Diane Boyd Rauber, *Working With Parent Partners to Achieve Better Case Outcomes for Families*, Child Law Practice, Vol. 28, no. 11 (American Bar Association, January 2010) (providing suggestions to parents' attorneys for working with parent advocates and parents), accessible at http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/parentpartner2.pdf.

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complex laws and procedures governing the legal case. As described in the next section (*Holistic representation*), the lawyer will also provide or collaborate with other entities to secure representation for the parent on related issues necessary to prevent removal of a child from the parent or to allow the safe return of a child who has been removed.

The social worker will assess the strengths and needs of the parent and the family, provide case and crisis management, and work to access appropriate services. The family advocate – a parent who has successfully navigated the child welfare system – will provide peer-to-peer emotional support, accompany the parent to meetings, assist with challenging interactions as needed, and encourage the parent to stay motivated and engaged with services.

Holistic representation: Allegations of child maltreatment are commonly precipitated by or intertwined with family circumstances and challenges related to other legal issues, including, for example, housing, paternity, child support, domestic violence, and divorce. Criminal justice involvement and poverty-related issues such as lack of access to childcare, medical services, or mental health or substance abuse treatment may impact a parent’s ability to safely keep or regain custody of a child. Likewise, there is increased federal and state emphasis on protecting the autonomy and integrity of immigrant families involved in the child welfare system.³² Thus, in addition to providing direct legal services in the state intervention case, the Model Office will be expected to provide or collaborate with other entities to secure legal representation on issues that may prevent removal of a child from the family or reunify the child with the family after removal.³³

Finally, an essential component of holistic representation is a comprehensive understanding of community needs, strengths, and challenges. Thus, this RFP contemplates that Model Office staff will engage in community education and outreach, and will collaborate with individuals and organizations to identify and address systemic issues affecting families involved or at risk of involvement with CPS.

B. Timely Involvement of Counsel in CPS Investigations and Court Proceedings

The child welfare system's goal of promoting the safety, stability, and well-being of children within their families is best served when parents, children, and the child welfare agency are represented from the earliest stages of the government’s intervention into a family’s life. Federal guidelines advise States to ensure all parties have access to legal counsel “very early in the State intervention process, but no later

³² E.g., U.S. Immigration and Customs Enforcement (ICE) *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* ("Parental Interests Directive") (outlining elements related to ICE's field offices' handling of cases involving primary caretakers, parents or legal guardians of minor children, with particular focus on non-citizens involved in family court or child welfare proceedings), accessible at <http://www.ice.gov/parental-interest>; see also *Immigration and Child Welfare*, Child Welfare Information Gateway, accessible at <https://www.childwelfare.gov/pubPDFs/immigration.pdf>.

³³ See *ILS Parental Representation Standards*, *supra* note 3, Standard H (Breadth of Representation).

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than the point at which legal proceedings are initiated."³⁴ Early access to legal counsel by all parties can expedite the provision of appropriate services to families, prevent unnecessary separation of children from their families, promote timely and appropriate permanency decisions for children, and conserve agency and judicial resources.

In reality, parents are typically at a disadvantage with respect to early access to counsel. As a matter of course, the child welfare agency has legal representation from the inception of an investigation into the family. Moreover, New York law provides for appointment of an attorney for a child involved in a child protective proceeding at the earliest occurrence of: the court receiving notice of an extra-judicial emergency removal; the filing of an application for a pre-petition order of removal; or the filing of a petition alleging abuse or neglect.³⁵

In contrast, the Family Court Act requires that a parent be advised of the right to a court-appointed lawyer, if financially eligible, only when the parent "first appears in court."³⁶ As a result, there is a high risk that many parents will be without legal counsel for days, weeks or even months after their children are taken into state custody. As a highly influential New York State Senate Committee emphasized, "a number of highly significant events occur prior to the initial appearance and prior to the initial appointment of representation for the respondent. All of these events occur on an ex parte basis and many of the events are of a magnitude to shake the family structure of the respondent."³⁷ Numerous substantive and procedural rights are implicated during the investigatory and pre-petition stages of a

³⁴ Donald N. Duquette and Mark Hardin, *Adoption 2002: The President's Initiative on Adoption and Foster Care: Guidelines for Public Policy and State Legislation Governing Permanence for Children*, p. VII-1 (U.S. Dep't of Health and Human Services, Administration for Children and Families, Children's Bureau (June, 1999), accessible at <http://archive.org/details/guidelinesforpub00duqu> ("ACF Guidelines").

³⁵ Family Ct. Act § 1016.

³⁶ Family Ct. Act § 262.

³⁷ Jules Kerness and Constance R. Warden, *Child Protection and the Family Court: A Study of the Processes, Procedures, and Outcomes Under Article Ten of the New York Family Court Act*, pp. 131-132, *New York State Senate Standing Committee on Child Care*, (Sen. Mary Goodhue, Chair) (National Center on Child Abuse and Neglect, December 1989) (hereinafter "1989 Article Ten Study"), accessible at <https://www.ncjrs.gov/pdffiles1/Digitization/126665NCJRS.pdf>. According to the 1990 Annual Report of the Committee on Child Care, the 1989 Article Ten Study led to the enactment in 1990 of a consolidated 17 bill package addressing child abuse and neglect proceedings in New York State family courts, which "were the result of the committee's federally funded 1988-89 study of 500 Family Court case histories." *1990 Annual Report of the New York State Senate Standing Committee on Child Care*, p. 2, accessible at <https://www.ncjrs.gov/pdffiles1/Digitization/129495NCJRS.pdf>. The Committee noted that among the "dramatic and sobering" conclusions of the study were that "children and their parents often are denied important due process protections in child abuse proceedings; child protective agencies charged with assisting and monitoring the conduct of abusive families cannot fully perform their duties, and, most important, family court orders in abuse and neglect proceedings are rarely monitored by the court . . . Implementation of the new laws will mean that courts as well as the Child Protective systems will have an enhanced capacity to ensure that children are protected and that families receive needed services." *Id.* at 6-7.

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child welfare case;³⁸ as such, "representation will likely be ineffective" unless the attorney for the parent has the opportunity to meet with the parent "well before the initial hearing."³⁹

As detailed in the next section, to ensure effective representation, Model Office staff will be expected to represent clients from the earliest point possible and throughout the duration of a state intervention case.

Pre-petition, CPS Investigation Representation. Legal counsel for parents during a CPS investigation can ameliorate the disruptive effects of state intervention into families.⁴⁰ Child welfare agencies are prohibited from forcibly taking children into custody without a court order unless there is an "imminent danger to the child's life or health."⁴¹ Experience shows, however, that agencies too often wield their emergency removal power in situations where such drastic state action is unnecessary,⁴² and even though they have not made efforts required by federal and state law to address the issues that brought the family to the agency's attention before removal of a child from his or her family.⁴³

³⁸ "Parents must appear at court in order to have an attorney assigned. (Thus, for example, a parent who does not appear the day after a child is removed, and therefore is not provided with an attorney, is unlikely to learn that she has a right to demand a hearing to review the removal.)" *Special Report on Family Court*, *supra* note 26, at 46.

³⁹ Leonard Edwards, *Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment*, *Juvenile and Family Court Journal* 63, no. 2 (Spring 2012), *accessible at* http://www.maine-court-improvement.org/fileLibrary/file_52.pdf; *see also* Mark Hardin & Susan Koenig, *Early Appointment of Counsel for Parents*, in *Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide*, pp. 101-109, U.S. Department of Justice, Office of Justice Programs (2nd Printing, 2009).

⁴⁰ *See ACF Guidelines*, *supra* note 34, at VII-8 ("A danger exists in child protection cases that personal rights of parents and children will be infringed in the well-intentioned zeal to help children and parents. Even before an attorney is appointed to represent the parents, government intervention in the family may have been initiated that has not been reviewed by any court or magistrate. The goals of the child protection system do not alter the need to recognize and respect the personal integrity and autonomy of parents. Protective State intentions do not justify any relaxation of legal safeguards or procedural protections for parents or children.")

⁴¹ Family Ct. Act § 1024(a).

⁴² *See, e.g., An Examination of the Child and Family Services Agency's Performance When it Removes Children from and Quickly Returns them to their Families: Findings and Recommendations from the Citizens Review Panel*, The District of Columbia Citizen Review Panel, September 2011, *accessible at* http://www.dc-crp.org/Citizen_Review_Panel_CFSA_Quick_Exits_Study.pdf; Kerness & Warden, *1989 Article Ten Report*, *supra* note 37 at 58-80, 88-93; Green & C-Plan, *Justice Denied*, *supra* note 20 at 4.

⁴³ *See generally* "Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children," Child Welfare Information Gateway, United States Health and Human Services Department, Administration For Children and Families, Children's Bureau, *accessible at* <https://childwelfare.gov/pubPDFs/reunify.pdf>; *see also* Special Child Welfare Advisory Panel, *Special Report on Family Court*, *supra* note 26 at 47.

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Members of the New York State judiciary and the bar recognize the value of providing counsel to indigent persons during government investigations.⁴⁴ Moreover, evidence shows that access to a lawyer by parents during CPS investigations can save significant amounts of taxpayer money that would otherwise be spent on the most expensive child welfare intervention - foster care.⁴⁵ Thus, in accordance with prevailing standards and best practices - and prudent financial sense - Model Office staff will be expected to provide representation to parents during CPS investigations, before court involvement.⁴⁶ Potential clients may be identified through means such as walk-ins, an in-house Helpline, referrals from criminal defense or civil legal services providers, community-based organizations or service providers, arrangements with the Family Court and/or the child welfare agency, or other means of connecting with parents at risk of CPS intervention.⁴⁷

For this purpose, the Model Office may choose a particular focus, such as clients presenting with particular types of legal issues affecting their ability to maintain a child safely in the home or within the extended family unit (e.g., eviction, inadequate or unsafe housing conditions, order of protection, transfer of custody custody/guardianship, divorce, etc.),⁴⁸ or may choose to serve a target population

⁴⁴ See, e.g., First Judicial Department Committee, *Crisis in Legal Representation of the Poor*, *supra* note 23 at 14 ("While there may be difficult administrative issues for compensating assigned counsel for pre-arrest representation, an effort should be made, perhaps through a resource center or a referral mechanism, to make pre-arrest representation generally available to indigent persons."); Committee to Ensure the Quality of Mandated Representation, *2015 Revised Standards for Providing Mandated Representation*, New York State Bar Association, Standard B ("Effective representation should be available for every eligible person whenever counsel is requested during government investigation or when the individual is in custody. Provision of counsel shall not be delayed while a person's eligibility for mandated representation is being determined or verified.").

⁴⁵ See, e.g., Vivek Sankaren, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, 40 Wm. Mitchell L. Rev. 1036 (2014), accessible at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles>.

⁴⁶ See *ILS Parental Representation Standards*, *supra* note 3, Standard I, **Representation prior to court intervention**; see also American Bar Association, *Standards of Practice for Attorneys Representing Parents in Child Abuse and Neglect Cases*, Standard 4 (2006) (describing goals of pre-petition representation), accessible at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf.

⁴⁷ *Indicators of Success for Parent Representation*, *supra* note 5, at 9-10 ("In some jurisdictions attorney referral might be based on cases deemed "high risk" but where safety is currently controlled. This may be based on agency safety/risk assessment tools. Cases may also be assigned to attorneys when particular risk categories are established where a parents' attorney may be helpful in preventing removal by dealing with legal issues that might impact the parent's ability to keep children at home, for example, legal assistance for special education, housing, or relative custody.")

⁴⁸ For descriptions of two such programs see Robbin C. Pott, *The Detroit Center for Family Advocacy: A Call for Replicating an Effective Model*, American Bar Association (January 14, 2014), accessible at <http://apps.americanbar.org/litigation/committees/childrights/content/articles/winter2014-0114-detroit-cfa-replicating-effective-model.html> and the Family Preservation Project of the Neighborhood Legal Services Program, Washington, D.C. (April 10, 2014), <http://www.nlsp.org/resource-center/news/family-preservation-project>.

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with characteristics that make them particularly vulnerable to CPS intervention (for example, mothers of newborns who test positive for drugs).⁴⁹

Whatever the source of referrals and the selection criteria, the goal of pre-court representation by the Model Office will be to prevent unnecessary removals and to help parents obtain necessary and appropriate services that will keep the family together safely.⁵⁰ Model Office staff will advise and counsel parents about the exercise of their rights during a CPS investigation, and provide or collaborate with other entities to secure representation on legal matters affecting the child's safety and the family's stability. The staff may provide other types of assistance, such as: preparing the parent for and/or accompanying the parent at CPS interviews and meetings; advising and counseling the parent regarding voluntary placement of the child with relatives or other suitable caretakers; advocating for reasonable and realistic service plans that address the family's needs; and brainstorming creative ways to address the allegations against the parent.⁵¹

Timely Entry into Court Proceedings: Access by an accused parent to legal representation in advance of the first court appearance is crucial to meaningful and effective representation. At the hearing after a child has been involuntarily removed from his or her family, a judge must decide the critical question of whether, based on evidence presented, there is an "imminent risk" to a child's life or health to justify the removal. This hearing is a "critical stage" of state intervention litigation.⁵² Model Office staff will therefore be expected to meet with clients sufficiently in advance of and to actively participate in imminent risk hearings as necessary and appropriate to protect the parent's interests and advance the parent's goals.⁵³

To that end, the Model Office should seek to begin representation of eligible persons as soon as possible, even before a judge has issued an order of appointment.⁵⁴ In that regard, it should be noted that

⁴⁹ See, e.g., Vermont Parent Representation Center, <http://vtprc.org/>; The Bronx Defenders, Family Defense Practice, <http://www.bronxdefenders.org/our-work/family-defense-practice/>;

⁵⁰ See *ILS Parental Representation Standards*, *supra* note 3, Standard I (Representation prior to court intervention).

⁵¹ See Trine Bech, Mark Briggs, Elizabeth Bruzzo, Tracy Green, and Christie Marra, *The Importance of Early Attorney Involvement in Child Welfare Cases: Representation of Parents in Pre-Petition Proceedings*, at 4 (presented at the American Bar Association Second National Parents' Attorney Conference, July 2011) (accessible at http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation/conference_materials.html), (hereafter *Early Attorney Involvement*); see also Elizabeth Fassler and Wanjiro Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, 30 *Child Law Practice* 2, American Bar Association (April 2011) (accessible at <https://www.cfmy.org/news-blog/original-publications/>).

⁵² *ACF Guidelines*, *supra* note 34, at 101.

⁵³ *ILS Parental Representation Standards*, *supra* note 3, Standard K (Preliminary Court Proceedings).

⁵⁴ *Id.*, Standard 5 (requiring that attorneys and programs provide representation "for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or

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although Family Court Act § 262 states that judges must advise parents of the right to counsel at the parent's first court appearance, judges are not prohibited from appointing counsel before a parent appears in court, or even before eligibility is determined.⁵⁵ More importantly, consistent with principles of equal protection, indigent parents' right to counsel is not dependent upon judicial appointment of counsel.⁵⁶

To ensure protection of parents' rights and interests, and to provide the attorney with the best opportunity to provide meaningful and effective assistance of counsel, this RFP contemplates that the Model Office will establish mechanisms to ensure that parents have access to counsel from the earliest stages of a state intervention case, including during a CPS investigation, upon notice to the Family Court of an imminent or actual extra-judicial removal of a child by the agency, upon the filing of an application by the agency requesting an order of removal, and, at the very latest, upon the filing with the court of a petition alleging abuse or neglect.

C. Reasonable Attorney Caseloads

State intervention cases are complicated and labor intensive; they generally require more court appearances and last longer than other types of cases. Effective parental representation requires active in-court and out-of-court advocacy, and regular communication with the client, family members, and other professionals. Interlocutory or interim appeals may be necessary in some cases. Other proceedings such as custody, guardianship, family offense or paternity proceedings may be initiated during the course of the case. Moreover, social services needs and related legal issues often must be addressed.

verified."); *see also* New York State Bar Association Revised Standards for Providing Mandated Representation (2015), Standard B (Early Entry of Representation) ("Systematic procedures shall be implemented to ensure that prompt mandated representation is available to all eligible persons, particularly those held in detention facilities and where a child has been removed by a governmental agency from the person's home."). *See also* *People v. Rankin*, 998 N.Y.S.2d 573, 802 (County Court, Monroe County, 2014) ("[New York State Bar Association Revised Standards for Providing Mandated Representation], applicable to all attorneys tasked with representing indigent individuals, demonstrate, objectively, that effective representation for indigent individuals entails representation without delay pending the judge's eligibility determination . . . there is no scenario under which indigent individuals would not be afforded an impaired quality of representation where the Public Defender's function as counsel is effectively disabled pending receipt of a judge's order of appointment.")

⁵⁵ *Id.*, Standard I-5 (Assignment as soon as possible); *see also* *ACF Guidelines*, *supra* note 34, at 107-109.

⁵⁶ In *People v. Rankin*, an indigent defendant made statements to police after the local public defender, without having received an order of appointment by a judge, informed the police that he had been retained by the defendant's mother to represent the defendant. 998 N.Y.S.2d 573 (County Court, Monroe County, 2014). The court rejected the notion that an indigent person's "indelible right to counsel in this State" is contingent on a person's resources "or hinges in any manner on arbitrary factors such as socioeconomic class." *Id.* at 810. "To hold that a public defender . . . cannot promptly act in defense of his clients until a judge signs an order appointing him as counsel would reduce the indelible right to counsel to nothing more than a quixotic ideal to be dangled before the poor," and that such a requirement "would render the indelible right to counsel, for the underprivileged, a mere legal fiction more apropos of the indelible 'privilege' to counsel." *Id.* at 810-811.

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Numerous state and national entities stress the fundamental premise that effective representation is impossible without manageable caseloads.⁵⁷ Given the unique complexities involved in state intervention cases, reasonable caseload limits are essential to permit attorneys to comply with their ethical responsibilities. This RFP therefore contemplates an office average of no more than 50 clients per attorney at any given time.⁵⁸ This cap is premised on the understanding that the workload of individual attorneys will vary depending on a number of considerations, including, but not limited to: attorney experience and expertise; differences among the types, complexity, and duration of cases on the docket; the number of active cases in the system; and how far along the provider is in the contract year. Other factors may also affect workloads, such as the level of activity required at different phases of a case; the involvement of multidisciplinary support staff; representation of clients on collateral issues; and engagement in community and professional activities.⁵⁹ As such, this RFP requires the grantee to establish protocols to ensure that the average caseload of the Model Office does not exceed the aforementioned caseload limit.

Section II: Project Description - What is this RFP seeking to achieve?

Now is the time for New York State to build upon prior successful initiatives in New York City and elsewhere as described in this RFP. Implementation in a county outside of New York City of the approach described herein will allow for assessment of its potential for replication and sustainability across the state.

The grantee will be expected to consult with the ILS Director of Quality Enhancement for Parental Representation when hiring professional staff and in assessing the need for technical assistance and identifying individuals, organizations, and/or entities with knowledge and experience with holistic and

⁵⁷ For example, New York State Office of Indigent Legal Services, *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, Standard 2 provides that “[c]ounties must ensure . . . that attorneys and programs providing mandated legal services . . . [m]aintain, by practices that include the ability to decline or withdraw from cases, manageable workloads that ensure the capacity to provide quality representation.”). See also the American Bar Association’s [Ten Principles Of a Public Defense Delivery System](#) (2002), Principle Five; and the New York State Bar Association’s Committee to Ensure Quality of Mandated Representation’s Revised Standards for Providing Mandated Representation (2015), Standard G-1, accessible at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=44644>.

⁵⁸ See *ILS Parental Representation Standards*, *supra* note 3, Standard D (Resources); *American Bar Association Parent Representation Standards*, Obligations of Attorney Managers, Standard 2 (“How attorneys define cases and attorney obligations vary from place-to-place, but having a manageable caseload is crucial. The standards drafting committee recommended a caseload of no more than 50-100 cases depending on what the attorney can handle competently and fulfill these standards.”)

⁵⁹ See e.g., Workload of the Attorney for the Child, Rule 127.5, Rules of the Chief Administrative Judge, New York State Unified Court System, Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts, accessible at <https://www.nycourts.gov/rules/chiefadmin/127.shtml#05>.

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multidisciplinary defense approaches, and with representation of parents in state intervention and other family, civil, criminal, and administrative matters. Such technical assistance may include, for example, consultations, trainings and/or workshops about pre-petition, CPS investigation representation; parent engagement; community outreach; reunification advocacy; multidisciplinary team dynamics; fiscal management; and administrative, operational, and informational systems.

- **Proposals should be developed in consultation with representatives of each County Law Article 18-B Family Court mandated representation provider in the applicant's county, including the person with administrative responsibility for overseeing the county's Assigned Counsel Plan.**
- **No county may submit more than one proposal.**
- **Proposals that rely on statutory changes for their implementation will not be funded.**
- **Proposed projects must comply with New York County Law 18-B, Section 722.**

Section III: Funding and Contract Period

The total available funds for award are \$2,610,417 (\$870,139 per year for each of three years). The Office anticipates making one award only; the selected applicant is not guaranteed the entire amount requested.

The grant will be issued for a period of three years. The Office reserves the right to reduce the award amount of any application based on reasons that include but are not limited to: cost effectiveness and reasonableness of proposed budget, demonstrated need, or inconsistent appropriation levels.

Section IV: Who is Eligible to Apply for this Request for Proposals

Only New York State counties, other than counties within New York City, are eligible to apply. Proposals must be submitted by an authorized county official or employee. There is no match or any other cost to the counties to participate in this project.



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Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board
From: Bill Leahy

Re: Allocation of ILS FY 2016-17 Aid to Localities Appropriation (\$96.2 million)

Date: September 23, 2016

At each of its previous September meetings, the Board has allocated the entirety of the ILS Aid to Localities appropriation for the fiscal year, thereby enabling the Office to (1) develop grants and distributions as authorized by the Board; (2) describe to providers, county and state officials the precise purposes for which the appropriated funds will be spent; and (3) fulfill its obligations to implement the terms of the Hurrell-Harring settlement.

In similar fashion and for the same reasons, I propose that the ILS FY 2016-17 Aid to Localities appropriation of \$96.2 million be allocated for the following purposes:

1. **Statutory Distribution (total: \$40,000,000).** The statutory distribution of \$40,000,000 to New York City, as mandated by State Finance Law § 98-b (3) (b). This statutory payment will be made to New York City in March of 2017. As noted at the September 26, 2014 Board meeting, the final statutory payment to upstate counties was made in March, 2014; beginning in FY 2014-15, in accordance with the phase-out provisions of State Finance Law § 98-b (3) (c), upstate counties no longer receive a statutory payment.
2. **Quality Enhancement Distributions (total: \$30,210,924).** Quality enhancement distributions totaling \$30,210,924 under Executive Law §§ 832 (3) (f) and 833 (7) (c), under which all counties and New York City will be enabled to receive no less state funding (a total of \$70,210,924) than they received in 2010. Of the \$30,210,924 total, the funds would be distributed as follows:
 - **Distribution #5.** \$15,488,228 represents the third year of a three year allocation of funds ("Distribution #5"), which is comprised of two parts: (1) \$7,361,326 represents the amount paid to upstate counties in March, 2014 (see above) as their final statutory payment (25% of 2010 amount) under the phase-out provisions of State Finance Law §

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98-b (3)(c); and (2) \$8,126,902 represents the continuation of the amount allocated to upstate counties and New York City for the three year distribution authorized by the Board at its September, 2011 meeting (Distribution #2).

- **Distribution #6.** \$7,361,326 represents the second year of a three-year distribution (“Distribution #5”), which amount is similar to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2012 meeting (Distribution #3).
- **Distribution #7.** \$7,361,326 represents the *first* year of a new three-year distribution, which amount is similar to the amount allocated to upstate counties for the three year distribution authorized by the Board at its September, 2013 meeting (Distribution #4). Since the Board has previously allocated funding for each of three years for Distribution #4 (FY 2013-14, FY 2014-15 and FY 2015-16), the Board is asked to authorize this new three year funding allocation to continue providing this funding to the counties, subject to the same conditions of consultation with providers and approval by the Office as the previous quality improvement distributions.

3. **Competitive Grants (total: \$10,610,417).**

- **Quality Enhancement and Upstate Caseload Reduction (\$4,000,000).** Grants in the amount of \$4,000,000 that will finance the second year of a three year program to enhance quality and reduce caseloads in counties outside New York City. The Board has previously allocated three years of funding for the initial Quality Enhancement and Upstate Caseload Reduction grant (FY 2012-13; FY 2013-14; FY 2014-15) in a similar amount of \$4,000,000 per year (\$12,000,000 over three years).¹
- **Counsel at First Appearance (total: \$5,740,278)**
 - i. **Counsel at First Appearance (\$4,000,000).** Grants in the amount of \$4,000,000 that will finance the third year of a three-year program to provide counsel at a defendant’s first court appearance in counties outside of New York City.²
 - ii. **Additional Allocation (\$1,740,278).** At its April 22, 2016 meeting, the Office recommended and the Board approved delaying the issuance of the Wrongful Conviction Prevention Center RFP and the Assigned Counsel Infrastructure RFP,

¹ During the FY 2016-17 State budget negotiations, we sought to secure additional funding to supplement the Quality Enhancement and Upstate Caseload Reduction grant, in order to expand the scope of existing programs and add new programs. While we were unsuccessful in FY 2016-17, we will again seek additional funding in the FY 2017-18 State Budget and, if successful, the Board may be asked at a later date to authorize supplementing this grant with such additional funding.

² During the FY 2016-17 State budget negotiations, we unsuccessfully sought to secure additional funding to supplement the Counsel at First Appearance grant, in order to continue existing programs and offer counties that did not participate in the first round of funding an opportunity to do so. We will again seek additional funding in the FY 2017-18 State Budget and, if successful, the Board may be asked at a later date to authorize supplementing this grant with such additional funding.

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and directing that funding to supplement the funding available for the Counsel at First Appearance Grant.

- **Model Upstate Parental Representation Office (pilot program) (\$870,139).** A grant in the amount of \$870,139 that will finance the third year of a three year program to develop a model upstate parental representation office.

4. Single Source Contracts (total: \$178,658)

- **Clinton County (\$80,000).** \$80,000 represents the third year of a three year single source contract; through this funding, Clinton County became the 46th county to benefit from submitting a proposal for the Quality Enhancement and Upstate Caseload Reduction grant.
- **Steuben County (\$98,658).** \$98,658 represents the third year of a three year single source contract; through this funding, Steuben County became the 47th county to benefit from submitting a proposal for the Quality Enhancement and Upstate Caseload grant.

5. Implementation of *Hurrell-Harring* (HH) Settlement Order (total: \$15,200,000)

- **Quality Improvement Funding (\$2,000,000).** \$2,000,000 represents the amount appropriated for the second year of a two year contract to implement the terms of the written plan developed by ILS to improve the quality of indigent defense in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington).
- **Counsel at First Appearance (\$2,000,000).** \$2,000,000 represents the amount appropriated for funding the second year of a five year contract implementing the written plan developed by ILS to provide each eligible criminal defendant in the five *Hurrell-Harring* settlement counties (Onondaga, Ontario, Schuyler, Suffolk and Washington) with counsel at his or her first appearance.
- **Caseload Relief (\$10,400,000).** \$10,400,000 represents the amount appropriated in the FY 2016-17 State Budget to provide interim caseload relief for indigent legal service providers in the five *Hurrell-Harring* settlement counties. The plan developed by ILS for the allocation of these funds is currently being reviewed by the Office of State Comptroller.
- **Counsel at First Appearance (\$800,000).** \$800,000 represents the amount appropriated in the FY 2016-17 State Budget to ensure that the four Settlement Counties participating in ILS's first three year Counsel at First Grant program will continue to receive the same level of funding when the second Counsel at First Grant program is released this fall. The Board authorized the Office to submit a plan to the Director of Budget requesting that these funds be allocated directly to the four counties in the same amount as was awarded under the first Grant; a total of \$726,283. This plan is currently being reviewed by the Director of Budget.

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Improving the Quality of Mandated Representation Throughout the State of New York

To: Indigent Legal Services Board

From: Bill Leahy

Re: FY 2017-2018 Budget Request

Date: September 16, 2016

I seek your approval of a budget request for FY 2017-2018 in the amount of \$136,600,000, which consists of \$130.2 million in Aid to Localities and \$6.4 million in State Operations. Please see the specific components of this request in the attached **Office of Indigent Legal Services: FY 2017-2018 Budget Proposal**. As indicated therein, with respect to State Operations we seek an increase of \$400,000 to add three additional staff positions (\$300,000) and modest salary increases in order to retain the services of highly valued long-term staff (\$100,000). We have also renewed our annual requests, thrice previously approved by the Board, for an Upstate New York Appellate Resource Center (\$800,000) and the first two of nine Regional Support Centers (\$2 million). The additional staff positions are identified and their duties are described in the attached **FY 2017-2018 ILS Staff Positions**. The justification for the Regional Support Centers is found in the attachment, **State Funded and ILS Staffed Regional Support Centers: Vital Support for Quality Assurance, and An Essential Component of Statewide Reform**. The justification for the Upstate Appellate Resource Center is contained in the attached **Upstate New York Appellate Resource Center: A Proposal to Ensure Equal Justice and Reduce the Risk of Wrongful Convictions**. The total request for State Operations is \$6.4 million, an increase of \$3.2 million over current funding.

Our request for Aid to Localities funding is in the amount of \$130.2 million, an increase of \$34 million. The majority of this amount, \$19 million, is for Upstate Caseload Relief, and is \$1 million less than the amount we have sought and the Board has approved in the two preceding years. This is because our forthcoming Upstate Cost Estimate for 2015 is expected to demonstrate further modest progress via our distributions and grants in gradually reducing excessive caseloads in upstate counties. The requests for \$8 million for Counsel at First Appearance, \$3 million for Assigned Counsel Program support and Model Office Grants and \$3 million for Compliance with ILS Standards are identical to those presented to and approved by the Board last year, with the exception that the funding for compliance with standards is specifically directed to our Eligibility Criteria and Procedures. Finally, we request your approval of \$1 million for Quality Improvement in the lawsuit Counties, in addition to the \$2 million that would be provided under level funding of the current year Appropriation. Please note that level funding of Aid to Localities would also continue the \$12.2 million in additional funding to these five counties that the Governor proposed and the Legislature approved for the current fiscal year.

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OFFICE OF INDIGENT LEGAL SERVICES: FY 2017-18 BUDGET PROPOSAL

	<u>Amount Requested</u>	<u>Increase over FY 2016-17</u>
<u>State Operations</u>		
FY 2016-17 Funding: \$3.2 million		
Office Staff & Retention	\$3.6 million	\$0.4 million
Regional Support Centers	\$2 million	\$2 million
Statewide Appellate Center	\$0.8 million	\$0.8 million
Total State Operations	\$6.4 million	\$3.2 million
<u>Aid to Localities</u>		
FY 2016-17 Funding: \$96.2 million		
Upstate Caseload Relief	\$19 million	\$19 million
Counsel at First Appearance	\$8 million	\$8 million
ACP and Model Office Grants	\$3 million	\$3 million
Eligibility Standards Compliance	\$3 million	\$3 million
HH Quality additional	\$1 million	\$1 million
Total Aid to Localities	\$130.2 million	\$34.0 million
<u>Total ILS FY 2017-18 Request</u>	<u>\$136.6 million</u>	<u>\$37.2 million</u>

FY 2017-18 ILS Staff Positions**#1. 2nd Assistant Grants Manager (projected annual salary range: \$50,000 to \$60,000).**

Our grants and distributions area is burgeoning, and we are in need of additional assistance to manage the contract and claims processes. With contracts for 6 outstanding distributions, three competitive grants and the Hurrell-Harring settlement, we are currently managing well over 300 active contracts, with another 100+ contracts to be developed in the next half year for the 7th ILS distribution and 2nd set of CAFA contracts.

Our current Assistant Grants Manager position is now solely and necessarily dedicated to reviewing and processing claims for reimbursement. We are in need of a second Assistant Grants Manager to assist the Grants Manager in preparing contract extensions, contract modifications and communicating with counties to keep them current on submitting their paperwork. The addition of this position would free up the Grants Manager to spend more time on developing RFPs and working with the counties, providers and the Office of General Services, Business Service Center and State Comptroller's Office, to ensure the most effective utilization of state funds. The Assistant Grants Manager would report to the Grants Manager.

#2. Secretary (projected annual salary range: \$40,000 to \$45,000).

Our Executive Assistant/Office Manager is in need of secretarial assistance to assist in managing the 19 person ILS office, which has grown by 8 persons in the past year alone. The Executive Assistance/Office Manager's responsibilities have grown considerably with the addition of this new staff and acting as liaison to the Statewide Financial System (SFS). SFS duties include travel expense reports, reconciling agency credit card purchases, approving transactions in FileNet, addressing questions from the Business Service Center (BSC) regarding invoices and vouchers, receiving accounts payable communications and acting as an approver of requisitions in SFS. Day-to-day responsibilities include scheduling and coordinating meetings and travel, providing logistics for conference meetings, coordinating between agencies in resolving administrative and operational problems, billing and bookkeeping, purchasing office supplies and equipment, processing correspondence, assisting the Director and Counsel in preparation of reports, and receiving and responding to telephone calls for ILS staff. A Secretarial position would assist the Executive Assistant/Office Manager in the performance of these duties and would report to the Executive Assistant/Office Manager.

#3. Administrative Officer (projected annual salary range: \$70,000 to \$80,000).

Under the direction of agency Counsel, the Administrative Officer would perform a wide variety of duties involving administrative tasks and operations of the agency, particularly as they relate to fiscal aspects of the agency's provision of funding to counties, vendors and indigent legal service providers. Specific responsibilities would include assisting agency Counsel in working with state and local agencies such as the Division of Budget, Office of General Services and State Comptroller's Office to identify problem areas, prepare documents, determine solutions, and obtain necessary authorizations for use of ILS funding in order to advance agency procurements and programs. The Administrative Officer would provide assistance to the Grants Manager in various fiscal aspects of managing contracts, review and

analyze reports and made recommendations, as requested, and perform other duties as assigned. Finally, the Administrative Officer would assist agency Counsel in the performances of duties related to agency ethics trainings, personnel processes and Freedom of Information (FOIL) requests. The Administrative Officer would report to agency Counsel.



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Improving the Quality of Mandated Representation Throughout the State of New York

**Upstate New York Appellate Resource Center:
A Proposal to Ensure Equal Justice and Reduce the Risk of Wrongful Convictions**

The State of New York would be well-served by creating an upstate appellate resource center to handle complex criminal appeals in the 57 counties outside of New York City, and to assist panel attorneys who handle complex appeals. The staff attorneys at the resource center would be available to litigate the most serious cases, such as those where the defendant has been sentenced to life without parole, or a life sentence, or cases that raise particularly complex facts and legal issues. Currently –outside of New York City – the task of filing appeals in these cases primarily falls upon individual solo practitioners on the assigned counsel plan. The hours needed to litigate these complex cases often exceed the statutory cap of \$4,400.¹ If the most complex and serious cases were diverted to a state-funded upstate regional appellate office, staff attorneys with experience in litigating complex criminal appeals would save the counties money by being able to collaborate, share their research and expertise,² and create statewide resources including a brief bank that would collect briefs by subject matter that could be made available to any attorney representing an indigent defendant on appeal. Additionally, the attorneys at the resource center would be available to serve as editors and readers of panel attorneys' briefs, as is required by Standard IV of the New York State Office of Indigent Legal Services' Appellate Standards and Best Practices.³

The creation of such an office would not obviate the need for panel attorneys, as those attorneys would continue to provide representation in the large majority of appeals that would not be diverted to the resource center.⁴ Nor would the creation of an appellate resource center

¹ In a meeting with Justice Peters and the staff at the New York State Supreme Court, Appellate Division, Third Department on February 26, 2013, ILS staff were informed that in 2012, of 520 payment orders, 65 exceeded the statutory cap.

² At a meeting on May 13, 2013, with Frances Cafarell, Esq., Clerk of the Appellate Division, Fourth Department, Ms. Cafarell noted that the more experienced attorneys on the panel were more efficient, and that they submitted vouchers for less money than less experienced attorneys on comparable cases. She believes that is because more experienced attorneys are more efficient at reading the record, spotting issues, researching issues, and writing, than those with less experience.

³ See Standard IV: "No appellate criminal or family court brief should be filed without having been reviewed by another experienced lawyer." <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>

⁴ The upstate appellate resource center would handle less than 10% of the appeals state-wide. While some states that have created a state-wide appellate defender office handle virtually all of the indigent criminal appeals, e.g., Illinois, many state-funded appellate offices typically handle only a small percentage of the appeals throughout the state. For example, the State Appellate Defender Office in Michigan represented only 17% of indigent criminal defendants pursuing an appeal in 2011; the remaining 83% were represented by private assigned counsel.

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diminish the need for the existing institutional upstate defenders: the Monroe County Public Defender's Appeals Unit, the Hiscock Legal Aid Society in Syracuse, or the Buffalo Legal Aid Bureau, all of which handle a substantial number of appeals in a competent and professional manner. The attorneys at the resource center would, however, be available to any public defender, legal aid society attorney or assigned counsel panel member who needed research assistance, including access to the appellate resource center's brief bank, motion support practice, and mitigation reports by a certified social worker.

The staff attorneys at the appellate resource center would also be available to engage in collateral motions that challenge the validity of the conviction based on evidence outside the appellate record in the 57 counties. The most common such challenges are ineffective assistance of counsel claims and Brady issues (claims that exculpatory evidence has been withheld by the prosecution). The New York State Office of Indigent Legal Services' Standards and Best Practices require that assigned counsel assess each case as to whether collateral litigation would be in the client's best interest, and to pursue collateral litigation in appropriate cases.⁵ Creation of a state appellate resource center would enable all assigned counsel attorneys to comply with the ILS Standards and Best Practices.

Finally, creation of an upstate regional appellate defender office would serve the interests of justice by creating parity between the defense and the prosecution. As it stands now, a prosecution office that does not have the resources or ability to represent the People on appeal can refer its appeals to the New York Prosecutors Training Institute (NYPTI), and a staff attorney there handles the appeal on behalf of the People of the State of New York. NYPTI also has the resources to send its attorneys to any prosecutor's office in the state to assist prosecutors at trial.⁶ Although the New York State Defenders Association retains one attorney as a resource for appellate defense counsel, NYSDA does not have NYPTI's ability to provide comprehensive assistance and consultation to local litigators. In short, establishment of the Upstate New York Appellate Resource Center would level the playing field and provide a sorely needed measure of equal justice for indigent defendants in upstate counties. Finally, and very importantly, it would provide front-end protection against wrongful convictions, and the terrible human consequences and misuse of taxpayer funds that result from those tragic injustices.

⁵ See Standard XX: "After reviewing the record and case file, and after meeting with the client, appellate counsel must determine whether an investigation is warranted as to a possible CPL § 440.10 or § 440.20 motion. Claims not cognizable on direct appeal may involve ineffective assistance of counsel, undisclosed *Brady* material, competency of the client, newly discovered evidence, improper and prejudicial conduct outside the courtroom, and sentencing issues that cannot be raised on direct appeal. If such a motion is warranted, counsel must file it, seek permission to appeal from the denial of such a motion, and represent the client if leave is granted to defendant or to the prosecutor." <https://www.ils.ny.gov/files/Appellate%20Standards%20Final%20010515.pdf>

⁶ For example, a trial attorney who was employed at NYPTI from 2007 through 2010 spent nine weeks in St. Lawrence County assisting the District Attorney's office in a trial, and a month in Owego giving trial support to the Tioga County District Attorney's office. See, letter from Susan C. Ministero, Managing Attorney, The Legal Aid Bureau of Buffalo, Appeals Unit, dated August 16, 2013, on file with the Office of Indigent Legal Services.

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Improving the Quality of Mandated Representation Throughout the State of New York

State Funded and ILS Staffed Regional Support Centers:

Vital Support for Quality Assurance, and An Essential Component of Statewide Reform

After five years of observing, inquiring, reading, listening, consulting, funding and assessing the quality of the representation provided under New York's delivery of legally mandated representation to people who cannot afford to retain counsel, and after a year and a half of implementing the *Hurrell-Harring* settlement in the five lawsuit counties, it is unmistakably clear that the creation of Regional Support Centers throughout the state is an extremely important initiative that must be funded and implemented now to improve the quality and the consistency of legally mandated representation throughout the State of New York.

This need for the establishment of state-funded Regional Support Centers to help all localities improve the quality and the efficiency of indigent defense and parent representation has been apparent nearly from the outset of our operations:

The current county-based system cannot long survive if it is not supplemented by Regional Resource Centers, operating as integral parts of the Office, to assist counties in each region. These resources can include not only the already-planned Regional Immigration Assistance Centers, but also such areas as investigation, social services, litigation training, forensic assistance, appellate representation, certification of counsel, and others: many of which have been identified in the 2012 *Report on Sharing Resources* of the New York State Bar Association Committee to Ensure the Quality of Mandated Representation.

First Annual Report of the Indigent Legal Services Board, at 13-14 (November, 2012).

The failure of New York's primarily county-funded systems to provide the effective assistance of counsel that the Constitution requires has been repeatedly documented both in state reports ("The current indigent defense 'system' is a haphazard, patchwork composite of multiple plans that provides inequitable services across the state to persons who are unable to afford counsel." *Status of Indigent Defense in New York [Final Report, The Spangenberg Group, (2006) at 155]*); ("The current method of providing indigent defense services in New York imposes a large unfunded mandate by the state upon its counties [and] results in a very uneven distribution of services[.]" *Commission on the Future of Indigent Defense Services, Final Report to the Chief Judge of the State of New York, [2006] at 20-21*); and in every recent national assessment, including *Gideon's Broken Promise* (American Bar Association, 2004), *Justice Denied* (The Constitution Project, 2009) and *Securing Reasonable Caseloads* (ABA, 2011).

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Every locality is in need of access to state-funded and locally accessible expertise, training, consultation and support. Once established, these Centers will help to assure that the quality of justice one obtains in New York does not fluctuate and often fail, depending solely on the happenstance of where one's case arises, or which provider assumes responsibility for one's representation. The State of New York cannot and must not tolerate the continuation of such inequity in the provision of counsel; a right that is "fundamental and essential to fair trials[.]" *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

We therefore propose the creation of state-funded Regional Support Centers that will assist local providers of indigent defense and parent representation by providing them with assistance in the following areas: 1) criminal defense and mandated family court representation, 2) legal research and advice, 3) appellate and post-conviction advice and assistance, 4) locally-based litigation and supervisory training; and 5) development of and access to investigative, forensic and other litigation support services. In particular, we emphasize two points: that these resources will be fully available to Assigned Counsel Programs in upstate New York, many of which lack the resources, expertise and independence to provide the effective representation that is required by law; and that the centers will encourage and facilitate regional cooperation in the delivery of mandated representation, with the twin goals of improving quality and increasing efficiency.

We envision a total of nine Centers: one in each of the upstate Judicial Districts 3 through 9, one on Long Island (JD 10), and one in New York City. Each Center would be staffed by a training director, a criminal defense attorney, a family court representation attorney, an appellate and post-conviction attorney, an investigative and forensic support resource person, a certified social worker, and an office manager/paralegal. We estimate the annual cost of operating these Centers to be in the vicinity of one million dollars annually, or a total annual expenditure of approximately \$9 million. We would like to begin building this essential support network in the new fiscal year, with the establishment of the first two Centers in far western New York (8th Judicial District, 4th Appellate Department: counties of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming) and in the North Country (4th Judicial District, 3rd Appellate Department: counties of Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Saint Lawrence, Saratoga, Schenectady, Warren, Washington).

It has now been three years since we first formally requested an appropriation for the creation of the Regional Support Centers described above. All our experience during that time reinforces our conviction that the establishment of these Centers is indispensable to improving the quality of justice throughout New York. Furthermore, the concentration of state resources and increased state funding to implement the settlement agreement in *Hurrell-Harring* widens the gap between the five counties that are making state-assisted strides forward, and the 52 that are not. These Regional Support Centers will express the State of New York's commitment to all counties, by providing state-funded resources that are of immediate assistance to overburdened local providers of mandated representation. They are an idea whose time is now.